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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,526	07/11/2003	Frits Jacobus Fallaux	2578-3833. 9US	5055
24247	7590	11/06/2006	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			PRIEBE, SCOTT DAVID	
			ART UNIT	PAPER NUMBER
			1633	

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,526	FALLAUX ET AL.	
	Examiner	Art Unit	
	Scott D. Priebe, Ph.D.	1633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 October 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-7,10,11,16 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-7,10,11,16,21,22 and 25 is/are rejected.
- 7) Claim(s) 23 and 24 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20061020</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/06 (and 5/1/06) has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Double Patenting

The provisional rejection of claims 1, 3-7, 16, 21, and 25 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 67 and 95 of U.S. Appl. No. 10/036,949 is hereby withdrawn due to the cancellation of the conflicting claims in the '949 application.

Claims 1, 3-7, 10, 11, 16, 22 and claim 25 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over: claims 43 and 44 of U.S. Patent No. 6,340,595 and claims 7, 32, and 35 of U.S. Patent No. 6,413,776 for the reasons of record set forth in the Office action of 8/29/05.

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Applicant's arguments filed 5/1/06 have been fully considered but they are not persuasive. Applicant has indicated that the rejections would be appealed, and have provided no new arguments in the submission. In view of Applicant's intent to appeal these rejections, Applicant might consider responding to the new rejections set forth below by simply acknowledging the provisional rejections, and indicating that terminal disclaimers would be filed when the claims are otherwise allowable, i.e. should Applicant prevail in their intended appeal, since the applications listed below are or appear to be commonly assigned with the instant application.

The following are provisional obviousness-type double patenting rejections because the conflicting claims have not in fact been patented.

Claims 1, 3-7, 10-11, and 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, 13, 25, 27-29, and 37 (and their dependent claims) of copending Application No. **09/449,854**; over claims 1-10, 13, and 26-30 (and their dependent claims) of copending Application No. **11/271,368**; and over claims 30-34 (and their dependent claims) of copending Application No. **11/450,038**.

Claims 1, 3-7, and 25 (and their dependent claims) are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 (and its dependent claims) of copending Application No. **11/256,352**; over claims 12-20, 24-31, 41, 42, 44, and 45 (and their dependent claims) of copending Application No. **10/237,007**; over claims 1 and 7-9 (and their dependent claims) of copending Application No. **10/790,562**; over claims 42, 47, 50, 51, and 58-60 (and their dependent claims) of copending Application No.

11/026,518; over claims 1-5 (and their dependent claims) of copending Application No. 11/070,890; over claims 1-3, 13, and 17-19 (and their dependent claims) of copending Application No. 11/280,757; over claims 1, 13, 14, 21, and 34 (and their dependent claims) of copending Application No. 11/259,245; over claims 42 and 43 (and their dependent claims) of copending Application No. 11/331,861; over claims 21 and 34 (and their dependent claims) of copending Application No. 11/544,490; over claim 27 of copending Application No. 11/018,669; over claims 17 and 20 of copending Application No. 11/140,418; over claim 1 (and its dependent claims) of copending Application No. 11/146,332; and over claims 15-18 (and their dependent claims) of copending Application No. 11/386,995.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of these applications are directed to cells (or methods of using cells) embraced by the instant claims, e.g. Per.C6 (e.g. ECACC No. 96022940). The '007 application has been allowed, and is due to issue as U.S. 7,029,848 on Nov. 11, 2006, at which time the rejection over this application will no longer be provisional.

Each of the '854, '368, 038, and '352 applications are related to one another, and are commonly assigned with, but share no common inventor with, the instant application. Each of the '007, '562, '518, '890, and '757 applications are related to one another; the '007, '562, 890, and '757 applications share inventor Bout with the instant application; and the '007, '518, and '757 applications are commonly assigned with the instant application, and although the records accessible by the Examiner do not show that the '562 and '890 applications have been assigned, it is assumed that they are also commonly assigned with the instant application. Each of the '245, '861, and '490 applications are related to one another, and are commonly assigned with, but

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share no common inventor with, the instant application. The '418, '332 and '995 applications are commonly assigned with, but share no common inventor with, the instant application. The '669 application shares inventor Bout with the instant application and does not appear to have been assigned, although its parent application was commonly assigned with the instant application so it is assumed that this application is or will be commonly assigned.

Claims 1, 3-7, 10-11, and 25 are directed to an invention not patentably distinct from the specified claims of commonly assigned (or presumably commonly assigned) applications 09/449,854; 11/271,368; 11/450,038; 11/256,352; 10/237,007; 10/790,562; 11/026,518; 11/070,890; 11/280,757; 11/259,245; 11/331,861; 11/544,490; 11/018,669; 11/140,418; 11/146,332; and 11/386,995 for the reasons indicated above. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). These commonly assigned (or presumably commonly assigned) applications discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly

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assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Allowable Subject Matter

Claims 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott D. Priebe, Ph.D. whose telephone number is (571) 272-0733. The examiner can normally be reached on M-F, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached on (571) 272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Scott D. Priebe, Ph.D.
Primary Examiner
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